

The complaint

E1 and E2, limited companies, represented by one of their directors, Mr D, have complained about their motor fleet insurance broker, Marshall Wooldridge Limited. E1 and E2 think the policy, in respect of one of the vehicles covered was mis-sold, or that they weren't properly advised by Marshall about key terms which caused the insurer to decline a claim when that vehicle was stolen. For ease, in the body of my decision, I'll refer to E1 and E2 as "E".

What happened

E holds a commercial fleet policy giving cover for a number of vehicles. Cover is arranged via Marshall. Marshall checks the market each year to find cover suitable for E's needs. Prior to renewal in December each year Marshall sends E a proposal report setting out important cover information relevant to the upcoming renewal. The car in question, "L", was added to the cover prior to renewal in 2020.

In April 2023, L was stolen. E made a claim to its insurer. The insurer declined the claim. It said that it was a condition precedent to cover that L was fitted with a tracker, and it hadn't been. E said it was unaware of that condition. It felt this was something Marshall had not told it about and had not drawn to its attention. Marshall said the detail hadn't been included in its proposal report in 2021, but was in the policy schedule sent to E. It said it had been included in the proposal report in 2022.

E felt the detail within the policy documents and report were not enough. E thought Marshall's duty of care to it extended further than that – that this important condition should have been specifically highlighted and drawn to its attention. E said that a previous client handler for Marshall had always told E when changes were needed or important detail was required, and couldn't understand why that hadn't happened regarding this condition. E said it chooses to use, and pay for, the services of a broker to ensure it is properly advised about cover – and it didn't think that had happened here.

Marshall, in a final response letter, said that its proposal report in 2022 had contained the condition. It said its client handler had asked Mr D to read the proposal and let the handler know if anything required changing. It said confirmation, containing recommendations based on that proposal were then sent twice to E's directors before the policy schedule was issued on 13 December 2022. Marshall said the policy schedule also contained the condition set out in full on page two. Marshall therefore felt it had done enough to draw the condition to E's attention prior to L being stolen. E complained to the Financial Ombudsman Service.

Our Investigator felt Marshall had done enough to draw the condition to E's attention. So, she wasn't minded to uphold the complaint. E asked for an Ombudsman's decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I appreciate that the loss of the car is an important and significant issue, and one which E had thought there would be cover for. It's unfortunate here that that wasn't the case. In this complaint against Marshall though, I'm not deciding the fairness of the condition in question or the insurer's reliance upon it to decline the claim. Rather my decision turns on whether Marshall, as E's broker, acted fairly to reasonably make E aware of the condition.

Marshall is a broker and from the detail I've seen, including the proposal reports, it takes on the role of advising E about cover. Marshall searches the market prior to renewal every year to find cover that suits E's needs in terms of key things like price and level of cover. Marshall doesn't apply terms or conditions to any recommended cover – those terms and conditions are applied by the insurer. But it would be Marshall's role, where there are key terms and/or terms which significantly impact the cover, to draw those to E's attention.

I think it can be agreed here that the condition in question had the potential to significantly affect the cover and that E, although it was sent documents detailing the condition, did not know about it. The question here then becomes one of did Marshall do enough to discharge its duty to draw that condition to E's attention?

In answering that question, I must bear in mind that E is a commercial customer. I appreciate E chooses to use a broker to assist it with obtaining cover and navigating the complexities of insurance contracts. But E still has a significant duty of its own to discharge – it must complete its own checks to ensure the cover put forward is suitable for it and that the details on which the proposed cover is based are correct. The proposal report explains that whilst it contains data gathered by Marshall for the purpose of assisting E with finding the most cost effective and appropriate programme of insurance, its content is put forward for E's consideration.

I also bear in mind that Marshall's report seems clear and succinct. It isn't the case that E was expected to trawl through individual documents and policy terms relating to each individual vehicle on cover. The document is 23 pages long, but I don't view it as unnecessarily wordy and its broken down into sections with clear headings. I note the reader's attention is drawn early on in the document, at page seven, to a Warranties and Conditions Declaration, with a request for the same to be signed by the reader. This section sets out that certain conditions apply, the condition in question is listed, and confirms that non-compliance may affect cover. I think that the request for a signature alone indicates the importance of the detail contained in this part of the document and I'm satisfied that a commercial customer in particular will understand that something which requires signing demands that careful attention is paid to it.

I think it was reasonable for Marshall to draw E's attention to the important condition in the way that it did. I don't think Marshall reasonably had to do more, such as by either verbally highlighting this individual condition or setting out the fact of it in a cover email or similar. I don't think Marshall failed E either in selling it the cover it did or in the way that it communicated the cover, including its relevant terms and conditions, to E. I'm satisfied that it would not be fair or reasonable to hold Marshall liable for the loss which occurred when the insurer declined the claim for L on the basis of the policy condition.

My final decision

I don't uphold this complaint. I don't make any award against Marshall Wooldridge Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask E1 and E2 to accept or reject my decision before 5 December 2024.

Fiona Robinson
Ombudsman